

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Indivisible Washington's 8th District MUR 7417
4 Dr. Kim Schrier for Congress and Philip Lloyd
5 in his official capacity as treasurer
6 Jason Rittreiser for Congress and Jay Petterson
7 in his official capacity as treasurer
8 Dr. Shannon for Congress and Janica Kyriacopoulos
9 in her official capacity as treasurer

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11 **I. INTRODUCTION**

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13 The Complaint alleges that Indivisible Washington's 8th District ("WA8"), a self-styled
14 "grassroots" organization formed in 2017, failed to register and report as a political committee in
15 violation of the Federal Election Campaign Act of 1971, as amended, (the "Act").¹ The
16 Complaint asserts that WA8 became a political committee by raising or spending over \$1,000 for
17 the purpose of electing a Democrat to Congress from Washington 8th Congressional District,
18 including sponsoring a candidate forum that benefited three Democratic candidate committees:
19 Dr. Kim Schrier for Congress, Jason Reittereiser for Congress, and Dr. Shannon for Congress.²
20 Because of WA8's purported political committee status, the Complaint also argues that WA8's
21 website failed to include a disclaimer.³ Finally, the Complaint contends that WA8 coordinated
22 with the Washington State Democratic Party ("WSDP") to help elect Democratic candidates.⁴

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¹ Compl. at 27 (June 21, 2018).

² *Id.* at 12-14.

³ *Id.* at 8.

⁴ *Id.* at 27.

1 WA8 denies it violated the Act.⁵ The Schrier and Rittereiser Committees deny they received an
2 in-kind contribution as a result of their participation in the candidate forum.⁶

3 As further discussed below, it appears unlikely that the expenses associated with the
4 activities referenced in the complaint crossed the \$1,000 statutory threshold for political
5 committee status. Accordingly, the Commission dismisses, as a matter of prosecutorial
6 discretion, the allegations that WA8 failed to register and report as a political committee in
7 violation of 52 U.S.C. §§ 30102, 30103, 30104; and that it made unreported in-kind
8 contributions in violation of 52 U.S.C. § 30104(b).⁷ The Commission also dismisses, as a matter
9 of prosecutorial discretion, the allegations that WA8 failed to report in-kind contributions to the
10 Schrier, Rittereiser, and Hader committees, and that these committees failed to report in-kind
11 contributions from WA8 in violation of 52 U.S.C. § 30104(b).⁸ Finally, the Commission
12 dismisses, as a matter of prosecutorial discretion, the disclaimer allegations against WA8.⁹

13 II. FACTUAL AND LEGAL ANALYSIS

14 A. The Commission Dismisses the Allegations that WA8 Failed to Register and 15 Report as a Political Committee and Made Unreported In-Kind 16 Contributions

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18 WA8 states that it is “a grassroots group of individuals committed to progressive values”
19 and “an offshoot of the national Indivisible grassroots movement.”¹⁰ According to its website,

⁵ WA8 Resp. at 1 (July 23, 2018).

⁶ Schrier Committee Resp. at 2 (Aug. 3, 2018); Rittereiser Committee Resp. at 5 (July 30, 2018).
Dr. Shannon for Congress did not respond to the Complaint.

⁷ See *Heckler v. Cheney*, 470 U.S. 821 (1985).

⁸ *Id.*

⁹ *Id.*

¹⁰ WA8 Resp. at 1. The Indivisible movement's website states: “Indivisible.org is a joint website of
Indivisible Project and Indivisible Action. Indivisible Project and Indivisible Action are separate organizations.

1 WA8 was founded as a "Facebook group" in January 2017 and is "focused on Washington
2 State's Eighth Congressional District."¹¹

3 According to the Complaint, posts on WA8's social media pages reflect that the
4 organization raised and spent funds to influence a federal election. Regarding WA8's spending,
5 the Complaint highlights the organization's website, which included language such as: "control
6 of the House in 2018 will be decided by a small number of Swing Districts," and "[j]oin your
7 closest Swing District team to hear about things you can do to support Democrats — and defeat
8 Republicans — in that district, no matter where you live," and to "stop Trump and the GOP
9 agenda by working together."¹² The Complaint further alleges that Chris Petzold, purportedly
10 WA8's founder, sent out tweets announcing the organization's endorsement of Democratic
11 candidates Jason Ritterer and Kim Schrier,¹³ and its opposition to Republican candidate Dino
12 Rossi, stating "Working to ensure @DinoRossiWA loses in WA. . . again!"¹⁴ In support of a
13 student-led "March for Our Lives" demonstration, the Complaint alleges WA8 spent money to
14 print tags that attacked Rossi and stated "Flipthe8th."¹⁵ The Complaint also points to WA8's

Indivisible Project is a registered 501(c)(4). Its mission is to cultivate and lift up a grassroots movement of local groups to defeat the Trump agenda, elect progressive leaders, and realize bold progressive policies. Indivisible Action is a Hybrid Political Action Committee fueled by the grassroots movement to win elections and build local, independent progressive power nationwide." Indivisible, <https://indivisible.org/> (last visited Nov. 14, 2018).

¹¹ See Indivisible Wash.'s 8th Dist., <http://www.indivisible-wa8.com/> (last visited Nov. 14, 2018); see also, Compl. at 2 (excerpt from FAQs on WA8's Facebook page stating "we are working to flip our congressional seat 'from red to blue,'); *id.* at 4; (copies of posts from Chris Petzold, WA8's founder, endorsing candidates Kim Schrier and Jason Ritterer for the Eighth Congressional District primary); *id.* at 4-5 (copies of posts criticizing the Republican Party and 8th District Republican candidate Dino Rossi, and photos of individuals holding anti-Rossi posters).

¹² Indivisible Wash.'s 8th Dist., Resources, <https://www.indivisible-wa8.com/resources/>, (last visited Nov. 14, 2018).

¹³ Compl. at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 26.

1 official logo,¹⁶ banner,¹⁷ sales of WA8 merchandise,¹⁸ food brought to WA8 events,¹⁹ and its
2 Post Office Box²⁰ as further evidence of the organization's spending.²¹

3 The Complaint also alleges that on March 18, 2018, WA8 hosted a candidate forum that
4 featured three Democratic primary candidates, Schrier, Ritterer, and Hader.²² WA8 solicited
5 \$3 donations to defray the cost of the event, which was held at a church in Sammamish,
6 Washington,²³ and promised that any amount left over would be donated to a food and clothing
7 bank.²⁴

8 Finally, the Complaint alleges that WA8 and WSDP may have coordinated their efforts to
9 help elect Democratic candidates, and WA8's coordinated spending is further evidence that it is
10 a political committee.²⁵ The Complaint attaches a copy of what appears to be a document posted
11 to WA8's Facebook page that lists the WSDP as one of the "organizations with whom we [WA8]

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 15-23.

²⁰ *Id.* at 9.

²¹ *Id.* at 8-10.

²² *Id.* at 12-14. The primary for Washington's Eighth Congressional District was held on August 7, 2018. According to WA8, candidates who met a minimum threshold established by a committee of independent grassroots organizations in the district were invited to multiple candidate forums held throughout the district. WA8 Resp. at 1-2. WA8 asserts that the forums were hosted by various coalition groups, independent of party and candidate involvement, to give coalition members the opportunity to hear from various candidates to make an informed decision on coalition endorsement. *Id.*

²³ Compl. at 12-13.

²⁴ *Id.* at 14.

²⁵ *Id.* at 2, 24.

1 might be overbroad, reaching “groups engaged purely in issue discussion.”³² To cure that
2 infirmity, the Court concluded that the term “political committee” “need only encompass
3 organizations that are under the control of a candidate or the major purpose of which is the
4 nomination or election of a candidate.”³³ Accordingly, under the statute as thus construed, an
5 organization that is not controlled by a candidate must register as a political committee only if
6 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election
7 of federal candidates. Once an organization becomes a political committee, it must report its
8 receipts and disbursements as set forth in 52 U.S.C. § 30104.

9 Expenditures made by “any person other than a candidate or candidate’s authorized
10 committee) in cooperation, consultation, or concert, with, or at the request or suggestion of, a
11 national, State, or local committee of a political party, shall be considered to be contributions
12 made to such party committee.”³⁴

13 The available information fails to indicate that WA8 received contributions or made
14 expenditures exceeding the \$1,000 statutory threshold. With respect to contributions, WA8
15 states it does not solicit them.³⁵ Further, the amounts generated by WA8’s activities — \$3
16 attendance fees and merchandise sales — were likely modest.³⁶ Similarly, the value of any food
17 items provided to WA8 appears small.³⁷

³² *Id.* at 79.

³³ *Id.*

³⁴ 52 U.S.C. § 30116(a)(7)(B)(ii).

³⁵ Compl. at 4.

³⁶ The merchandise included, among other things, T-shirts, water bottles, and mugs. *Id.* at 15-18.

³⁷ *Id.* at 21.

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1 Regarding WA8's spending, the costs associated with the candidate forum were likely
2 small given that the event was held at a community church, WA8 only sought \$3 donations from
3 attendees to cover the costs, and ultimately donated \$150 to a food bank from the amounts
4 collected. Finally, the available information suggests that the group's other known expenses — a
5 website, a post office box, and the tags for March for Our Lives were *de minimis*.

6 Finally, while the statements on WA8's and WSDP's websites raise questions as to the
7 relationship between the two organizations, the Complaint fails to identify a particular
8 expenditure that may have been coordinated. Further, WA8 denies that it coordinated with any
9 other group, and we have no information regarding any specific payments made by either WA8
10 or the State Party that could result in the making of an in-kind contribution.³⁸

11 In sum, the available information does not indicate that WA8 met the statutory definition
12 of political committee, and thus, the Commission exercises its prosecutorial discretion and
13 dismisses the allegations that WA8 failed to register and report as a political committee in
14 violation of 52 U.S.C. §§ 30102, 30103, or 30104, or made unreported in-kind contributions in
15 violation of 52 U.S.C. § 30104(b).³⁹ Further, based on the likely small amounts at issue, the
16 Commission dismisses as a matter of prosecutorial discretion the allegation that WA8 made, and
17 Dr. Kim Schrier for Congress, Jason Ritterer for Congress, and Dr. Shannon for Congress
18 received, unreported in-kind contributions in violation of 52 U.S.C. § 30104(b) related to the
19 candidate forum.⁴⁰

³⁸ See *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007) (Commission will dismiss matter when matter does not merit further use of Commission resources, due to factors such as vagueness or weakness of evidence).

³⁹ *Heckler* 470 U.S. at 831. See also MUR 6205 (Fort Bend Democrats) (EPS case dismissing political committee status allegation where \$1,000 expenditure threshold may have been exceeded by a very small amount).

⁴⁰ *Heckler*, 470 U.S. at 831.

1 **B. The Commission Dismisses the Disclaimer Allegations**

2 The Act requires that all public communications by any person that expressly advocate
3 the election or defeat of a clearly identified federal candidate must contain a disclaimer.⁴¹ Public
4 communications include general political advertising but not communications over the internet,
5 except for communications placed for a fee on another person's Web site.⁴² All websites of
6 political committees require a disclaimer.⁴³

7 Even if WA8's social media posts contain express advocacy, they would not require
8 disclaimers because they do not appear to be public communications, given that they were not
9 placed for a fee on another person's website.⁴⁴ As to WA8's website, the Commission exercises
10 its prosecutorial discretion and dismisses this allegations, consistent with the dismissal of the
11 political committee status allegations. (See previous section.) Finally, as to the "\$2.65" tags,
12 WA8 spent only \$5.60 on them, and based on the *de minimis* amount at issue, the Commission
13 dismisses the disclaimer allegations as a matter of prosecutorial discretion.⁴⁵

⁴¹ See 52 U.S.C. § 30120(d); 11 C.F.R. § 110.11(a) (disclaimers required for public communications financed by any person that expressly advocates the election or defeat of a clearly identified candidate).

⁴³ 11 C.F.R. § 110.11(a)(1).

⁴⁴ *Id.* § 100.26.

⁴⁵ See *Heckler*, 470 U.S. at 831.

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